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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re C.L., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

A155316

(Alameda County
Super. Ct. No. JD-029677-01)

J.L. (Mother) contends the juvenile court abused its discretion in placing her daughter C.L. (Minor) with the Minor's father (Father) and terminating jurisdiction in a juvenile dependency proceeding. (Welf. & Inst. Code, §§ 300, 361.2.)¹ She further contends the court improperly delegated visitation issues to the discretion of Father and others. We will affirm.

I. FACTS AND PROCEDURAL HISTORY

A. Petition, Detention and Jurisdiction

In April 2018, while the Minor was living with Mother, the Alameda County Social Services Agency (Agency) filed a juvenile dependency petition under section 300, subdivisions (b)(1), (c), and (g). The petition alleged that Mother had multiple alcohol-

¹ All statutory references hereafter are to the Welfare and Institutions Code.

related falls that necessitated emergency medical treatment and hospitalizations; Mother drove her children to and from school under the influence of alcohol and was observed swerving on the road and almost hitting a parked car; the Alameda County Sheriff's Department found Mother "passed out" in her home after leaving her daughter at school; for over a week, Mother was intoxicated every day after her children returned from school; Mother caused physical injury to her children while under the influence of alcohol; Mother's home contained clutter up to three feet high; the Minor and her sister said they were afraid of Mother when she was intoxicated; and Mother denied any alcohol dependency and minimized her ongoing alcohol use.

The Agency's Detention Report set forth the facts alleged in the petition and added that Mother denied her alcohol use, had been evicted from prior housing due to her hoarding tendencies, and currently lived in reportedly "deplorable" conditions. The report further advised that Father and his wife were now caring for the Minor. The court ordered the Minor detained and elevated Father to presumed father status.

In May 2018, the Agency filed a jurisdiction and disposition report recommending that the Minor stay in Father's care and that the Minor's dependency case be dismissed. The Minor and her sister had expressed that they were afraid for Mother if she did not obtain treatment for her alcohol use, they "wanted their mother to be healthy before they had any communication," and they were adamant that they were not safe in Mother's care. Mother's family was supportive of Father caring for the children while Mother focused on recovery.

The Agency filed a May 2018 Addendum Report, again recommending that Minor remain in Father's care and that the Minor's case be dismissed, and noting that Father agreed with the recommendation. The children were doing well with Father and were still unready or unwilling to talk to Mother. Mother had been attending 12-step meetings, but she arrived at her first alcohol test on May 19, 2018 under the influence of alcohol, and staff held her car keys for at least six hours until she tested below the legal limit. Mother insisted she did not have an alcohol problem, but she tested positive for alcohol again three days later. On May 16, 2018, the child welfare worker provided Mother a

referral to individual therapy, but Mother (initially) did not follow up. Mother vacillated between refusing inpatient treatment and showing some willingness to consider it. After Mother indicated on May 29, 2018, that she would consider inpatient treatment, the child welfare worker provided her information for inpatient treatment options on May 29 and May 30, 2018.

On the date for the uncontested jurisdiction and disposition hearing, the court found true the jurisdictional allegations under section 300, subdivisions (b) and (g). Regarding disposition, the court set a contested hearing at the request of Mother, who sought reunification services as to both children.

On July 23, 2018, the Agency filed an Addendum Report for the contested disposition hearing, again recommending that the Minor remain in Father's care and that the Minor's case be dismissed. Mother had begun weekly individual therapy and moved into a sober living environment, but she missed several sessions with her outpatient treatment provider, twice provided samples for her alcohol tests that were abnormally dilute, and on another occasion was unable to provide a sample. Meanwhile, the children were reportedly close to being ready for visits with Mother, and the case worker had submitted a request to "The Gathering Place" for therapeutic visitation for Mother, the Minor, and the Minor's sister.

B. Disposition: Custody and Visitation

At the contested disposition hearing on July 24, 2018, the court admitted the Agency's reports into evidence, and the Agency recommended that the court place the Minor with Father and dismiss the Minor's case (§ 361.2, subd. (b)(1)).

The children's attorney reported that the Minor may be ready to call and exchange text messages with Mother, but the children were still "very reserved in that area and feeling traumatized, as they should be." Counsel acknowledged that Father was committed to having the Minor reunify with Mother in the future, when she is ready. To increase the likelihood that both children would be reunified with Mother around the same time, the children's attorney asked the court to keep the Minor's case open and order reunification services for Mother as to both children. Mother's attorney also

requested that the court keep the Minor's case open and order the Agency to provide reunification services to Mother for both children.

Father supported the Agency's recommendations. He also supported the Minor having a relationship with Mother and visiting her when appropriate, and was committed to keeping the children together due to their sibling bond. Father expressed concern, however, that if Mother completed reunification and the Minor were returned to her, removal might reoccur. Father's attorney added that the Minor's therapist was willing to see both children in joint sessions.

The court adopted the Agency's recommendation that the Minor remain in Father's care and her case be dismissed. The court stated that its decision was based in part "on the representation that has been made here in Court about the good faith belief that . . . if and when Mom is solid in her recovery that [Father] will encourage the girls to be placed back with her." Toward the end of the hearing, the parties and court discussed specific exit orders pertaining to custody and visitation, with the Agency to prepare a written custody (and visitation) order to be circulated among the parties for approval and then submitted to the court.

As reflected in the minute order for the July 24, 2018 hearing, the court made the following findings and orders: the Minor was adjudged a dependent of the court; the Agency complied with the case plan; there was clear and convincing evidence that the Minor needed to be removed from Mother's physical custody, because returning the Minor would cause a substantial danger to the Minor's physical health, safety, protection, or physical or emotional well-being and there were no reasonable alternate means to protect the Minor; placement of the Minor was approved in the home of Father, who was to become the Minor's caretaker as set forth in the custody order; and juvenile court jurisdiction was terminated.²

² The Agency recommendations adopted by the court also included an order that the Agency "arrange for visitation between the child(ren) and [Mother] . . . as frequently as possible consistent with the child(ren)'s well-being."

After the hearing, the Agency presented a proposed custody order and visitation order to the court, which the court signed on July 24, 2018. The custody order provides for joint legal custody and sole physical custody of the Minor to Father and, as to visitation, provides that “[Mother] may spend time with the children . . . [a]s stated on the attached form JV-205.” The form JV-205 states that Mother will have the children with her “[a]t the Gathering Place for therapeutic visitation between [Minor’s sister], [Minor], and [Mother],” supervised visitation shall occur “[u]ntil further order of the superior court,” and “[t]ransportation to the visits must be provided by [Father].”

Mother filed a notice of appeal from the July 24 custody order.

II. DISCUSSION

A. Order Terminating Jurisdiction and Denying Reunification Services

In placing a child after removal from a custodial parent, the juvenile court first determines whether there is a willing parent who was not residing with the child at the time of the events that brought the Minor within the provisions of section 300. (§ 361.2, subd. (a).) “If that parent requests custody, the court *shall* place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a), italics added.) The burden is on the party opposing placement “to show by clear and convincing evidence that the child will be harmed if the nonoffending parent is given custody.”

(*In re Z.K.* (2011) 201 Cal.App.4th 51, 70.)

If the court places the child with the nonoffending parent, the court may (1) order that the parent become the legal and physical custodian of the child and terminate jurisdiction; (2) order that the parent assume custody subject to the jurisdiction of the court; or (3) order that the parent assume custody subject to the supervision of the court, with services to one or both of the parents. (§ 361.2, subd. (b)(1)–(3).) Whether to order services, and to which parent, is left to the court’s discretion because the child is in placement with a parent rather than out-of-home. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1244; see *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651–652 [juvenile court has broad discretion when deciding among the options in § 361.2, subd. (b)];

In re Erika W. (1994) 28 Cal.App.4th 470, 475–478 [court had discretion not to order reunification services for previously custodial parent when child was placed with previously noncustodial parent.].)

Here, ample evidence supported the court’s placement of the Minor with Father, without reunification services to Mother. The court found true the petition allegations that Mother had multiple alcohol-related falls requiring emergency medical treatment and hospitalizations; Mother drove her children to and from school under the influence of alcohol; deputies found her “passed out” in her home after leaving her daughter at school; every day for over a week Mother was intoxicated when her children returned home from school; Mother caused physical injury to her children while under the influence of alcohol; the children were afraid of Mother when she was intoxicated; and Mother nonetheless denied any alcohol dependency and minimized ongoing alcohol use. Between detention and disposition, Mother vacillated in her willingness to attend inpatient treatment and tested positive for alcohol or failed to appear for tests. Furthermore, there was no finding that placement of the Minor with Father would be detrimental to the Minor’s well-being; to the contrary, the Minor was doing well with Father, and he was committed to keeping the children together and open to the Minor’s visitation with Mother when appropriate. Accordingly, the conditions for placement were plainly met under section 361.2, subdivision (a), and the court was well within its discretion under section 361.2, subdivision (b) to order the Minor into Father’s custody, terminate jurisdiction, and deny Mother reunification services.

Mother argues that the case should not have been dismissed because it might harm the Minor’s relationship with Mother, the Minor might not receive therapy, and the Minor’s counsel asked to keep the case open. These arguments fail to show that the disposition was irrational or otherwise constituted an abuse of discretion.

B. Visitation Order

The court must retain control over *whether* visitation between the Minor and a parent will occur, and it may not delegate that question to a legal guardian, therapist, or the child (although the child’s desires may be a dominant factor). (*In re Nicholas B.*

(2001) 88 Cal.App.4th 1126, 1138–1139; *In re S.J.* (2008) 167 Cal.App.4th 953, 962.) But the court *may* delegate to a third party the responsibility for managing the details of the visits, including their time, place, and manner. (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1123.)

Mother argues that the court’s visitation order should be reversed because it does not actually order Mother to have “any visitation at all,” since, she claims, the authority to determine if, when, and how often Mother will visit the Minor has been delegated to others including Father. The argument is unavailing for multiple reasons.

1. Forfeiture

A party’s failure to raise an objection in the juvenile court forfeits the right to claim error on that ground. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686; *In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Here, as Mother acknowledges, there is nothing in the record indicating that Mother objected when the proposed custody and visitation orders were presented to the court. Nor does the record show that Mother ever contended that the visitation order did not really order visitation or inadequately set forth details about the frequency or length of the visits. Mother’s challenge is forfeited.

2. The Order is Sufficient

In any event, the visitation order is plainly sufficient. The order states that Mother “*will* have the children with . . . her . . . [*a*]t the Gathering Place for therapeutic visitation between [Minor’s sister], [Minor], and [Mother].” (Italics added.) It further provides that supervised visitation shall occur “until further order of the superior court” and that “[t]ransportation to the visits must be provided by [Father].” Furthermore, the court ordered the Agency to offer visits “as frequently as possible consistent with the child(ren)’s well-being.” As such, the court required visitation, directed where it will be held, mandated that it be supervised, tied the frequency of visitation to the Agency’s assessment of the children’s well-being and to the frequency of visits with the Minor’s sister, dictated who will provide transportation to the visits, and specified that the visitation shall continue until further order. Although Mother complains that the order does not state any specific amount or time of visitation, those matters were not delegated

to Father or to therapists at the Gathering Place, but to the Agency; under the circumstances of this case, it was not error for the court to leave these details to the Agency to serve the best interests of the child.

Mother's reliance on *In re T.H.*, *supra*, 190 Cal.App.4th 1119 in this regard is misplaced. There, an order provided for visitation by the father, but only upon "agreement of the parents," and it was unlikely the parents would reach agreement due to their relationship, giving the mother de facto veto power over father's visitation rights. (*Id.* at pp. 1123–1124.) Here, by contrast, it is ordered that visitation "will" take place between Mother and the Minor; visitation is not conditioned on Father's agreement, and, in any event, Father has demonstrated a desire to work with Mother and her extended family to preserve sibling bonds, support Mother in her recovery, and allow for visitation to occur.

3. No Prejudice

Lastly, Mother fails to show that she did not receive adequate visitation, or will not receive adequate visitation, or that she is otherwise prejudiced by the visitation order. Mother claims she "may be hard-pressed to demonstrate changed circumstances" if visitation never occurs, but the argument is unpersuasive. While Mother would have to show changed circumstances to modify or terminate an exit order, she would not have to do so to enforce her rights under an existing order. (*In re Marriage of Ciganovich* (1976) 61 Cal.App.3d 289, 294.)

Mother fails to establish error.

III. DISPOSITION

The order is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.